

In several statements, appellant argued that management officials, including Mr. Burke, did not respond to her concerns, that other supervisors called employees by derogatory names

and that she worried about the security of vending machines that were missing \$7,000.00. She indicated that she had concerns about policies regarding such matters as customer service telephone lines and outgoing mail which missed the last dispatch. Appellant claimed that Mr. Burke discriminated against her and asked her to do such inappropriate things as deliberately mischaracterize delivery confirmation scores and create delays in the delivery of third class mail. She felt that supervisors rendered her ineffective by always reversing her directives to employees. Appellant alleged that she was directed to use a government credit card for unauthorized purchases and that in November 2003 Althea Franklin, a supervisor, violated her privacy by telling a coworker about her medical condition.

Appellant submitted various documents including administrative records concerning her dealings with supervisors and several reports of Dr. Gerald S. Kane, an attending clinical psychologist.

On June 6, 2004 the Office accepted that appellant sustained an employment-related anxiety reaction to stress.

On February 3, 2005 the Office issued a notice of proposed rescission of its prior acceptance of appellant's claim for an anxiety reaction to stress. The Office indicated that appellant did not submit sufficient evidence to establish any compensable employment factors.¹ She submitted additional documents, including a March 8, 2005 statement in which a coworker stated that in November 2003 Ms. Franklin told another coworker that she had a stress-related condition. In a June 2, 2005 decision, the Office rescinded its prior acceptance of appellant's claim for an anxiety reaction to stress. The Office found that there was sufficient evidence of record to establish a single employment factor, the incident in November 2003 when Ms. Franklin violated her privacy by telling a coworker about her medical condition. The Office determined, however, that appellant did not submit medical evidence showing that she sustained an emotional condition due to that employment factor.

Appellant requested a hearing before an Office hearing representative which was held on December 9, 2005. In a February 24, 2006 decision, the Office hearing representative vacated the Office's June 2, 2005 rescission of its prior acceptance of appellant's claim for an anxiety reaction to stress. He remanded the case to the Office in order to obtain more information from the employing establishment about appellant's alleged employment factors. The Office hearing representative indicated that after any necessary development a *de novo* decision should be issued regarding appellant's claim.

In an April 20, 2006 statement, an employing establishment official responded to appellant's allegations regarding various incidents and conditions at work and asserted that her allegations were not accurate.

¹ A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that a claimed medical condition was caused or adversely affected by employment factors. This burden includes the submission of a detailed description of the employment factors or conditions which the claimant believes caused or adversely affected the condition or conditions for which compensation is claimed. If a claimant does establish an employment factor, she must submit medical evidence showing that a medical condition was caused by such a factor. *Effie O. Morris*, 44 ECAB 470, 473-74 (1993); *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

In a November 15, 2006 decision, the Office denied appellant's emotional condition claim on the grounds that she had not met her burden of proof to establish that she sustained an employment-related emotional condition. The Office found that appellant established a single employment factor, the incident in November 2003 when Ms. Franklin violated her privacy by telling a coworker about her medical condition. The Office further determined that appellant did not submit medical evidence showing that she sustained an emotional condition due to that employment factor.

LEGAL PRECEDENT

Section 8128 of the Federal Employees' Compensation Act provides that the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application.² The Board has upheld the Office's authority to reopen a claim at any time on its own motion under section 8128 of the Act and, where supported by the evidence, set aside or modify a prior decision and issue a new decision.³ The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.⁴

Workers' compensation authorities generally recognize that compensation awards may be corrected, in the discretion of the compensation agency and in conformity with statutory provision, where there is good cause for so doing, such as mistake or fraud. It is well established that, once the Office accepts a claim, it has the burden of justifying the termination or modification of compensation benefits.⁵ This holds true where, as here, the Office later decides that it erroneously accepted a claim. In establishing that its prior acceptance was erroneous, the Office is required to provide a clear explanation of the rationale for rescission.⁶

ANALYSIS

Appellant alleged that she sustained an emotional condition due to various incidents and conditions at work. On June 6, 2004 the Office accepted that appellant sustained an employment-related anxiety reaction to stress. In a June 2, 2005 decision, the Office rescinded its prior acceptance of appellant's claim for an anxiety reaction to stress.⁷ In a February 24, 2006 decision, an Office hearing representative vacated the Office's June 2, 2005 rescission of its

² 5 U.S.C. § 8128.

³ *John W. Graves*, 52 ECAB 160, 161 (2000).

⁴ *See* 20 C.F.R. § 10.610.

⁵ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁶ *John W. Graves*, *supra* note 3.

⁷ The Office found that there was sufficient evidence of record to establish a single employment factor, the incident in November 2003 when Ms. Franklin violated her privacy by telling a coworker about her medical condition. The Office determined, however, that appellant did not submit medical evidence showing that she sustained an emotional condition due to that employment factor.

prior acceptance of appellant's claim for an anxiety reaction to stress and remanded the case to the Office for further development of the factual evidence.

The Board notes that at the point that the Office hearing representative vacated the Office's June 2, 2005 rescission decision, the acceptance of appellant's claim for employment-related anxiety reaction to stress, remained outstanding. As noted above, once the Office accepts a claim, it has the burden of justifying the termination or modification of compensation benefits.⁸ Appellant's claim would remain in accepted status until the Office presented sufficient evidence or argument to rescind its acceptance of her claim.

In a November 15, 2006 decision, however, the Office denied appellant's emotional condition claim on the grounds that she had not met her burden of proof to establish that she sustained an employment-related emotional condition. The Office did not attempt to present evidence or argument in support of a rescission of its acceptance of appellant's claim. Rather, the Office impermissibly shifted the burden of proof to appellant to establish an employment-related emotional condition. However, at that time, appellant's claim was in an accepted status. The Office had the burden of proof to adjust or modify her entitlement to compensation. Her claim remained accepted for anxiety reaction to stress and eligible to receive compensation for disability or medical expenses related to this accepted condition.

CONCLUSION

The Board finds that the Office did not properly rescind its prior acceptance of appellant's claim for an anxiety reaction to stress.

⁸ See *supra* note 5 and accompanying text.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' November 15, 2006 decision is reversed.

Issued: October 18, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board